

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ELIOT FLORES,

Plaintiff,

v.

PRISON HEALTH SERVICES, et al.,

Defendants.

Case No. 1:18-cv-540

HON. JANET T. NEFF

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OPINION AND ORDER

Plaintiff filed this prisoner civil rights action pursuant to 42 U.S.C. § 1983. Many of Plaintiff's claims were dismissed on screening, and the Complaint was ordered to be served on Defendants Corizon Health, Inc. (Corizon), Gerlach and Papendick, who moved for summary judgment. The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R&R), recommending this Court grant Defendants' motion and close this case. The matter is presently before the Court on Plaintiff's objections to the Report and Recommendation, to which Defendants filed a response. In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections and issues this Opinion and Order.

Plaintiff presents four objections to the Report and Recommendation. Plaintiff attaches to his objections a Declaration from himself dated February 8, 2019 (ECF No. 37-1). The February 8, 2019 Declaration is the same as the December 18, 2018 Declaration that Plaintiff submitted in

support of his response to Defendants’ motion for summary judgment (ECF No. 31-1), with one additional paragraph indicating that “[a]t no given time did I ever tell any Defendant that I was doing squats, running or playing basketball. The only exercise I was doing was walking, until my leg would hurt, pull-ups, and push-up. I told Dr. Gerlack this” (Decl. ¶ 18, ECF No. 37-1 at PageID.318).

Objection #1. Plaintiff first argues that the Magistrate Judge erred in failing to draw “all justifiable inferences” in his favor and “completely disregard[ing] anything Plaintiff presented, including declarations and medical records” (Pl. Obj., ECF No. 37 at PageID.300-302). Plaintiff’s argument lacks merit. The Magistrate Judge thoroughly summarized the allegations in Plaintiff’s complaint and properly stated the standard for reviewing motions for summary judgment (R&R, ECF No. 36 at PageID.280-283). Plaintiff attached two exhibits to his response to Defendants’ motion for summary judgment: his December 18, 2018 Declaration (Ex. A, ECF No. 31-1) and his medical records (Ex. B, ECF No. 31–2). While the Magistrate Judge referenced in the Report and Recommendation the set of medical records attached to Defendants’ motion (ECF No. 27), that set contained the documents that Plaintiff subsequently attached to his response. Plaintiff’s objection reveals no error by the Magistrate Judge and is therefore properly denied.

Objection #2. Next, Plaintiff sets forth a discussion of the objective and subjective elements of his Eighth Amendment deliberate indifference claims and asserts that neither Papendick nor Gerlach should be dismissed (Pl. Obj., ECF No. 37 at PageID.302-309). However, Plaintiff merely reiterates—nearly verbatim—the discussion he set forth in his response to Defendants’ motion for summary judgment (Pl. Resp., ECF No. 31 at PageID.237-243). Plaintiff’s “objection” fails to identify, let alone demonstrate, any factual or legal error in the Magistrate

Judge's Eighth Amendment analysis or ultimate conclusion. Plaintiff's second objection is therefore properly denied.

Objection #3. Next, Plaintiff briefly argues that the Magistrate Judge erred in focusing on “what was done for him by Defendant[]s but intentionally overlook[ing] what was not done for him” (Pl. Obj., ECF No. 37 at PageID.309-310). Plaintiff's argument fails to demonstrate any factual or legal error by the Magistrate Judge. Rather, Plaintiff's argument only serves to reinforce the legal proposition stated by the Magistrate Judge that where Plaintiff simply disagrees with the treatment he received, such disagreement does not implicate the Eighth Amendment (R&R, ECF No. 36 at PageID.287). Plaintiff's third objection is properly denied.

Objection #4. Last, Plaintiff asserts that the Magistrate Judge erred in recommending dismissal of Defendant Corizon (Pl. Obj., ECF No. 37 at PageID.310). In support of his assertion, Plaintiff again restates a discussion of case law that he included in his response to Defendants' motion for summary judgment (Pl. Obj., ECF No. 37 at PageID.310-312; Pl. Resp., ECF No. 31 at PageID.243-246). Plaintiff's “objection” fails to identify, let alone demonstrate, any factual or legal error in the Magistrate Judge's analysis or conclusion that Defendant Corizon is entitled to dismissal. Plaintiff's fourth objection is properly denied.

Accordingly, this Court adopts the Magistrate Judge's Report and Recommendation as the Opinion of this Court. A Judgment will be entered consistent with this Opinion and Order. *See* FED. R. CIV. P. 58. Because this action was filed *in forma pauperis*, this Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal of this decision would not be taken in good faith. *See McGore v. Wrigglesworth*, 114 F.3d 601, 610 (6th Cir. 1997), overruled on other grounds by *Jones v. Bock*, 549 U.S. 199, 206, 211-12 (2007). Therefore:

IT IS HEREBY ORDERED that the Objections (ECF No. 37) are DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 36) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that Defendants' Motion for Summary Judgment (ECF No. 25) is GRANTED.

IT IS FURTHER ORDERED that this Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this decision would not be taken in good faith.

Dated: September 26, 2019

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge